

### REMARKS/ARGUMENTS

Claims 40, 41, 45, 47, 54, 56, 57, 59, 62, 63, 68, 70, 76, 78, 80, 81, 88, 93, 123-128, 130, and 140 are pending in the present application. Claims 45, 47, 54, 56, 57, 62, 63, 70, 78, 81, 123-127, and 140 are amended. Claims 76, 93, and 130 are cancelled herein without prejudice to prosecution of the subject matter contained therein at a later date. Upon entry of this amendment, claims 40, 41, 45, 47, 54, 56, 57, 59, 62, 63, 68, 70, 78, 80, 81, 88, 123-128, and 140 will be pending in the application. No new matter has been introduced by way of this amendment.

Preliminarily, Applicants note with appreciation the indication of rejections mooted or withdrawn as listed at pages 2-4 of the present Office action.

Claim 76 is rejected under 35 U.S.C. § 112, second paragraph. Applicants have deleted claim 76 without prejudice to the prosecution of its subject matter at a later date. Withdrawal of the rejection is respectfully requested.

Claims 93 and 130 are rejected under 35 U.S.C. § 112, first paragraph for alleged new matter in recitation of amino acids 748-977 of the amino acid sequence of SEQ ID NO:5 and of nucleotides 2776-3466 of the nucleotide sequence of SEQ ID NO:4. Applicants disagree with the rejection but nonetheless have cancelled claims 93 and 130 without prejudice to prosecution at a later date. Withdrawal of the rejection is respectfully requested.

#### **Amendments to the claims**

Claim 127 is amended to correct its syntax. Withdrawal of the objection is respectfully requested.

Claims 57, 63, 70, 126, 127, and 140 are amended to independent form. Accordingly, claims 40, 41, 57, 59, 63, 70, 80, 126-128, and 140 should be in condition for allowance.

Claims 45, 47, and 68 as amended recite purified polypeptides comprising at least ten or fifteen contiguous amino acids of residues 750-977 of the amino acid sequence of SEQ ID NO:5, wherein the polypeptide includes at least one of SEQ ID NO:10 or a six asparagine residue stretch. Claims 54 and 56 recite immunogenic compositions comprising such polypeptides. Claims 62 and 78 are directed to methods of preparing immunogenic compositions of such polypeptides. Claims 81 and 88 are amended to recite immunogenic

polypeptides comprising a *Helicobacter pylori* CAI antigen comprising at least five contiguous amino acids from amino acids 750-977 of SEQ ID NO:5, including at least one of SEQ ID NO:10 or a six asparagine residue stretch. Each of the amended claims recites amino acids 750-977 of SEQ ID NO:5, support for which is found, for example, in Figure 3C of Applicants' priority document, FI92A/000052, which is incorporated by reference into the present specification.

Claims 123-125 are amended to recite polypeptides encoded by at least fifteen, thirty, or forty-five bases, respectively, of nucleotides 2782-3466 of SEQ ID NO:4. Nucleotides 2782-3466 of SEQ ID NO:4 are supported by Figure 3B of the Italian priority document.

No new matter has been introduced by way of the amendments. The present amendments to the claims should not be construed as acquiescence in any ground for rejection.

**Amended claims 45, 47, 54, 56, 62, 68, 78, 81, 88, and 123-125 are patentable over U.S. Patent No. 5,403,924 to Cover *et al.***

Claims 45, 47, 54, 56, 62, 68, 78, 81, 88, and 123-125 are rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 5,403,924 to Cover *et al.* ("the Cover patent"). Applicants disagree with the rejection. Nonetheless, Applicants have amended claims 45, 47, 54, 56, 62, 78, 81, and 123-125 to overcome the rejection.

Claims 45, 47, and 68 as amended recite purified polypeptides comprising at least ten or fifteen contiguous amino acids of residues 750-977 of the amino acid sequence of SEQ ID NO:5, wherein the polypeptide includes at least one of SEQ ID NO:10 or a six asparagine residue stretch. Claims 54 and 56 recite immunogenic compositions comprising such polypeptides. Claims 62 and 78 are directed to methods of preparing immunogenic compositions of such polypeptides. Amended claims 81 and 88 are directed to immunogenic polypeptides comprising a *Helicobacter pylori* CAI antigen comprising at least five contiguous amino acids from amino acids 750-977 of SEQ ID NO:5, including at least one of SEQ ID NO:10 or a six asparagine residue stretch. Claims 123-125 as amended recite polypeptides encoded by at least fifteen, thirty, or forty-five bases, respectively, of nucleotides 2782-3466 of SEQ ID NO:4.

Applicants respectfully assert that the present invention as defined by claims 45, 47, 54, 56, 62, 68, 78, 81, 88, and 123-125 is entitled to priority over the Cover patent. Applicants' disclosure of amino acids 750-977 of SEQ ID NO:5 and nucleotides 2782-3466 of SEQ ID NO:4 in Figures 3B and 3C of the Italian priority document (FI92A/000052) is entitled to a priority date of March 2, 1992. The Cover patent was filed October 13, 1992. Accordingly, the Cover patent does not qualify as prior art as to the claimed subject matter.

The Examiner asserts that Applicants' priority document does not have support for the individually recited fragments of SEQ ID NO:10 or six contiguous asparagines. It is well established law that the priority document must support, within the meaning of the first paragraph of 35 U.S.C. § 112, what is *claimed* in the United States application in order for the claimed subject matter to be entitled to the filing date of the priority document. *In re Gosteli*, 872 F.2d 1008, 1011 (Fed. Cir. 1989). Applicants note that amended claims 45, 47, 54, 56, 62, 68, 78, 81, 88, and 123-125 are not directed to individually recited fragments of SEQ ID NO:10 or six asparagines residues. Rather, the claims are directed to polypeptides comprising those sequences, immunogenic compositions of the claimed polypeptides, and methods of making the immunogenic compositions. Applicants respectfully assert that the disclosure of the Italian priority document satisfies the first paragraph of section 112 such that the presently claimed subject matter is entitled to a priority date of March 2, 1992.

Withdrawal of the rejection over the Cover patent is respectfully requested.

**Amended claims 81 and 88 are patentable over Peterson *et al.* (*Nature*, 354:369-373, 1991, abstract).**

Claims 81 and 88 are rejected under 35 U.S.C. § 102(b) over Peterson *et al.* (*Nature*, 354:369-373, 1991, abstract) ("the Peterson reference"). Applicants disagree. The Peterson reference was published December 5, 1991. The present invention is entitled to a priority date of March 2, 1992 (*see supra*). Accordingly, the Peterson reference is not prior art to the invention of claims 81 and 88 under section 102(b).

Nonetheless, Applicants have amended claim 81 to recite an isolated immunogenic polypeptide comprising a *Helicobacter pylori* CAI antigen having at least five contiguous amino acids from amino acids 750-977 of the amino acid sequence of SEQ ID NO:5, wherein said polypeptide includes at least one of the amino acid sequences selected from SEQ ID

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NO:10 and six contiguous asparagines residues. Applicants respectfully assert that amended claim 81 is patentably distinct in its recitation of a *Helicobacter pylori* CAI antigen over the disclosure of the Peterson reference relating to a transcription factor TFIIIE having SEQ ID NO:10. Withdrawal of the rejection is respectfully requested.

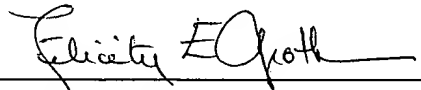
### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this application are in condition for allowance. The issuance of a Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, the undersigned may be contacted at 215-557-5908.

Respectfully submitted,

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